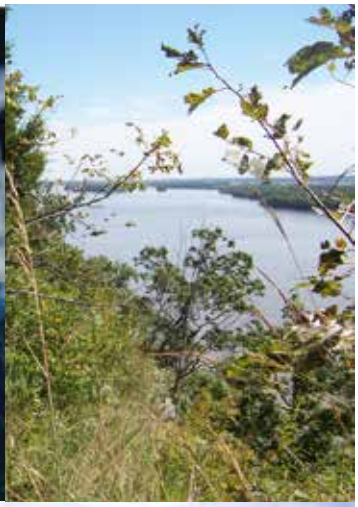


FOREST LEGACY
CONSERVATION LAND

U.S. Forest Service Stewardship Financing of Forest Legacy Conservation Easements

United States Department of Agriculture
Forest Service
Northeastern Area State and Private Forestry
Newtown Square, PA
Publication Number: NA-FR-01-14
September 2013

FOREST SERVICE
US
DEPARTMENT OF AGRICULTURE

U.S. Forest Service Stewardship Financing of Forest Legacy Conservation Easements

Northeastern Area State and Private Forestry
11 Campus Blvd., Suite 200
Newtown Square, PA 19073

www.na.fs.fed.us

September 2013
Publication Number NA-FR-01-14

Acknowledgments

The following people served on the project Advisory Team and are thanked for their contributions to this report:

Miranda Hutten
U.S. Forest Service, Natural Resources Specialist

Neal Bungard
U.S. Forest Service, Forest Legacy Specialist

Scott Stewart
U.S. Forest Service, Forest Legacy Program Manager, Community Forest and Open Space Conservation Program Manager

Dan McKeague
U.S. Forest Service, Forest Legacy/Stewardship Program Manager, Pacific Southwest Region, R5

Richard Peterson
Department of Natural Resources, Division of Forestry, Minnesota

Rachel Reyna
Department of Conservation and Natural Resources, Bureau of Forestry/Rural & Community Forestry Section, Pennsylvania

Karen Sjoquist
Forest Legacy Program Coordinator, Department of Lands, Idaho

Kate Willard
Department of Forests, Parks and Recreation, Agency of Natural Resources, Vermont

Report Prepared by:

Dea Brickner-Wood
Project Manager, Consultant, Durham, NH

Contributors:

Theresa Walker
Research Consultant, Durham, NH

University of New Hampshire Survey Center
Durham, NH

Catherine Arakelian
Graphic Designer, Portsmouth, NH

Table of Contents

1. Project Statement and Summary of Findings 4
Project Statement 4
Summary of Findings 4

2. Project Description 7
A. Defining Stewardship for Conservation Easements 7
B. Stewardship Funding for Conservation Easements 7
i. The Stewardship Pledge 7
ii. Conservation Easements & Stewardship Program Obligations 7
C. Report Overview 8

3. Forest Legacy Program and Conservation Easement Stewardship Overview 10
A. The Forest Legacy Program 10
B. Forest Legacy Conservation Properties 10
C. Program Partners 10
D. State and Territory Forest Legacy Programs & Conservation Properties: A Snapshot 11
i. State and Territory Forest Legacy Programs 1995–2013 11
ii. Forest Legacy Fee and Conservation Easement Projects 12
iii. State Forest Legacy Conservation Easement Properties 12
E. Administration of State Agency Forest Legacy Conservation Easement Stewardship Programs 12
i. Administration 12
ii. Monitoring 13
iii. Enforcement 13

4. Conservation Easement Stewardship Program Funding Mechanisms 14
A. Funding 14
i. Administration 15
ii. Monitoring 15
iii. Enforcement 15
B. Meeting the Financial Needs of Conservation Easement Stewardship 16
C. State-Dedicated Stewardship Funds 16
i. Purpose 16
ii. Conservation Easement Properties 16
iii. Administrative Oversight 16
iv. Funding Sources 17

5. Determining Stewardship Costs for Conservation Easement Properties 18

Case Studies 19

6. Enabling Legislation and Stewardship Funding. 36

7. Summary of State Stewardship Program Administration and Funding Mechanisms 37
A. How Adequate is State Stewardship Funding? A Self-Assessment 37
B. State Stewardship Program Strengths 37
C. State Stewardship Program Challenges 38
D. Components of an Effective State Forest Legacy Stewardship Program 38
E. Land Trust Funding Mechanisms 39
i. Sources of Funds 39
ii. Conservation Defense Fund 40
F. State-Dedicated Fund Options 40

8. Concluding Observations 41

9. Stewardship Resources and Literature 42
A. Resources and Literature 42
B. Example Documents: State Programs, Guidelines, Dedicated Funding Sources 44
i. Stewardship Program Policies and Guidelines 44
ii. Stewardship Fund Policy Description 44
iii. Partnership Arrangements, Memorandums of Understanding 44
iv. Calculating Stewardship Costs 44
v. Dedicated Sources of Funding 44
C. Map and List of U.S. Forest Service FLP States and Territories, by Region 45

1 Project Statement and Summary of Findings

Project Statement

The purpose of the *U.S. Forest Service Stewardship Financing of Forest Legacy Conservation Easements Project* is to present information about existing state Forest Legacy stewardship programs, and to provide information to state government agencies about options for financing long-term conservation easement stewardship of land protected by the Forest Legacy Program (FLP). The FLP is a federally funded program that is administered by the states.

For the purposes of this report, *stewardship* will refer to the administration, monitoring, and enforcement of conservation easement provisions. *Monitoring* includes an assessment of the property on an annual basis to determine if the conservation easement provisions have been upheld, or if violations have occurred. The *enforcement* of conservation easement provisions arises when a violation occurs. *Administration* incorporates the oversight duties and operation of the stewardship program.

Summary of Findings

A survey of Forest Legacy Program (FLP) state program managers in the United States highlighted the need for more funding dedicated to the stewardship of land conserved under the Forest Legacy Program.

The Importance of Stewardship on Conservation Easement Properties

The Forest Legacy Program (FLP) has successfully protected approximately 2,358,924 acres of environmentally important forest areas that were threatened by conversion to non-forest uses in the United States. The FLP ensures properties are permanently protected in perpetuity through several methods, the most common being the use of conservation easements.

Conservation easements are an important tool to protect land while enabling private landowners to continue ownership and use of the land. Threats to the integrity of conservation easements pose significant challenges to their long-term effectiveness. When a qualified entity, such as a state or territory, protects a property with a conservation easement, it is accepting the legal and ethical responsibility to uphold the terms of that easement in perpetuity. The ability to fulfill this pledge requires the entity responsible for the conservation easement to have established stewardship policies and practices, and to have access to adequate financial resources to support its ongoing obligations.

The states and territories responsible for Forest Legacy conservation easement properties acknowledge their stewardship responsibilities – the administration, monitoring, and enforcement – and are actively engaged in providing stewardship services for approximately 1,976,924 acres of land. These programs also recognize the challenges of providing consistent, quality stewardship services during times when states are faced with fiscal and capacity limitations.

The purpose of the *U.S. Forest Service Stewardship Financing of Forest Legacy Conservation Easements Project* is to present information about existing state Forest Legacy stewardship programs, and to provide information to state government agencies on options for financing long-term stewardship of land protected by the FLP. The resources contained in this report are offered to help state program managers strengthen the capacity of their stewardship programs for present needs and in the years ahead.

This report provides a snapshot of state and territory FLP stewardship operations and experiences, and examines the stewardship operations provided by land trusts. Forty-six states and territories responded (85% response rate) to a survey of state FLP managers. Thirty-five of the states participating in the survey manage Forest Legacy conservation easement properties. Survey participants reported 406 conservation easement properties were managed by their states, totaling 1,670,948 acres. While the state programs demonstrated diversity in how stewardship services were administered and funding was provided, there were also many commonalities among states, as described below.

Conservation Easement Stewardship Program Standards and Practices

Standards of practice enable consistent oversight and evaluation of conservation easements and provide guidelines for defending violations of easement terms. Several states identified the need to have policies and procedures in place to enable long-term stewardship of FLP land.

- *State conservation easement stewardship programs benefit from an assessment of need. The assessment includes an evaluation of policies and practices, and the staffing and financial needs for existing conservation easement properties and standards for new incoming projects.*
- *The establishment of written standards and policies for administration, monitoring, and enforcement provide consistency and long-term effectiveness of the stewardship program.*

Administration, Monitoring, and Enforcement

The majority of the states (89%) have a single staff person bearing the primary responsibility for overseeing the administration of FLP stewardship programs. The other state programs met staffing needs with multiple staff persons, and through a combination of administrative resources of other state agencies and qualified nongovernmental organizations (NGOs). (See Section 9 – Resources: Indiana University, *An Analysis of State Forestry Agency Organizational Structure and its Effectiveness for the Sustainable Monitoring of Conservation Easements*).

States identified the importance of increasing staffing levels to conduct easement monitoring effectively. Several states have collaborated with state field staff, other state agencies, and land trusts to conduct monitoring services. Developing and nurturing good landowner relationships was identified as an investment that limits future minor and major easement violations and litigation. Providing training and the necessary resources for monitoring personnel were identified as important components to effectively monitoring the large-acre properties that characterize many FLP projects. Securing the financial resources to meet these personnel demands was a commonly identified need.

- *The provision of consistent and adequate staffing and resources is essential in meeting stewardship monitoring obligations.*
- *Many state programs benefit from forming partnerships and collaborating with field staff, other state agencies, and NGO project partners in delivering stewardship services.*
- *The development and maintenance of quality landowner relationships enhances land management practices and limits easement violations.*

Funding Conservation Easement Stewardship

A majority of states fund their FLP stewardship activities either entirely or partially through funding from an annual operating budget. In times of restrictive state funding, this poses significant challenges to state programs. Funding constraints have impacted the capacity of state governments to provide adequate staffing for administration, monitoring, and enforcement activities, and to provide for future stewardship obligations.

While all but one state relies on at least some level of support from annual state operating budget funds, several states have sought to develop other sources of stewardship funds. Most of these are relatively new endeavors to support more recent FLP projects. Landowner and/or project partner contributions at the time of project closing, state funds, and state-dedicated sources of funds have contributed positively to state-dedicated stewardship funds, allowing states to better meet their stewardship obligations. States that do not have dedicated stewardship funds expressed an interest in exploring this approach to ensure greater funding stability.

In most cases, states benefit from combining a number of financial sources to support stewardship services. The funding sources utilized include: state funds (operating budget), landowner and/or project partner contributions at the time of project closing, and dedicated income from timber sales or assessments.

Nine states have dedicated stewardship funds. A majority of the states use the proceeds from the stewardship fund in conjunction with other funding sources to meet stewardship needs. A majority of these states employ one of two methods – flat rate or formula – to determine stewardship administration, monitoring, and enforcement costs for Forest Legacy conservation easement properties.

- *A majority of state program managers highlighted the need for more funding dedicated to the stewardship of land conserved under the Forest Legacy Program.*
- *State-dedicated stewardship funds serve as a funding mechanism that provides consistent funding for stewardship needs on an annual basis and in years to come.*
- *A diversity of funding sources has enabled several state programs to meet their stewardship financial needs. In addition to receiving funds from state annual operating budgets, state programs have utilized other sources including landowner and project partner contributions, and income from dedicated funding sources.*
- *When establishing a flat rate or formula for project stewardship contributions, states should consider not only the administrative and monitoring costs but also enforcement costs of easement stewardship.*

- *When states are considering establishing a state stewardship fund or a dedicated source of funds, they need to assess whether existing state legislation already enables this activity.*
- *Several states have collaborated with project partners, such as land trusts, to provide stewardship contributions. Although raising stewardship funds for a project is a difficult task for land trusts as well, these NGOs typically have access to fund raising options that states do not. The most common is securing stewardship contributions at the time of closing through landowner contribution and/or fund raising efforts. Collaboration between states and partner organizations is beneficial in the identification and support of establishing a dedicated funding source.*

2 Project Description

A. Defining Stewardship for Conservation Easements

The "stewardship" of conservation lands can have multiple meanings. For the purposes of this report, *stewardship* will refer to the administration, monitoring, and enforcement of conservation easement provisions. Most organizations focus on the stewardship responsibility of *monitoring* conservation easements. *Monitoring* includes an assessment of the property on an annual basis to determine if the conservation easement provisions have been upheld, or if violations have occurred. Monitoring may be conducted through an on-the-ground site inspection, or through other means such as aerial photography, fly-overs, imagery analysis, and remote sensing. The primary purpose of monitoring is to verify compliance with the purposes, goals, and terms as stated in the conservation easement and documented in the property's Baseline Documentation Report that was prepared at the completion of the conservation easement transaction. Other purposes for annual monitoring include developing and maintaining landowner relationships, addressing potential problems on a proactive basis, and performing due diligence to comply with funding requirements.

The *enforcement* of conservation easement provisions arises when a violation occurs. Typically, the first stage of dispute resolution, or minor violation, is managed through discussions with the landowner and is considered a routine stewardship administrative expense. If a major violation develops whereby the dispute remains unresolved and requires extensive legal advice or litigation, the ensuing costs exceed what is considered 'normal' stewardship administration costs and become enforcement costs. Enforcement costs include the actions and resources required to resolve the issue, such as legal advice, consultation with experts, litigation, and administrative staff time.

Administration incorporates the oversight duties and operation of the stewardship program. Staff and related expenses are incurred for regular activities including the management and coordination of monitoring and enforcement actions, providing easement interpretation, communications with landowners and others to resolve issues, and reviewing and approving Forest Management Plan updates and easement provisions such as Reserved Rights and/or Affirmative Rights provisions.

B. Stewardship Funding for Conservation Easements

i. The Stewardship Pledge

When a qualified entity, such as a qualified unit of government or organization, protects a property with a conservation easement, it is accepting the legal and ethical responsibility to uphold the terms of that easement in perpetuity. The ability to fulfill this pledge requires the entity responsible for conservation easement stewardship to have access to adequate financial resources to support its ongoing stewardship obligation.

Historically, organizations involved with conserving land have focused first on identifying and protecting the property, with less focus on how to support stewardship to ensure the protection is upheld. As the cumulative acres of protected lands increases, and the age of the conservation easement properties advances, public and nonprofit entities have increasingly recognized the importance of stewardship as well as the challenges of meeting their long-term obligations.

Successful stewardship programs provide adequate resources and delivery of services to ensure the easement property's conservation values are protected and its management and use are conducted in accordance with the terms of the easement. Because Federal FLP grant funds cannot be used for stewardship activities, participating states are seeking other funding sources to ensure that state-held FLP conservation easement properties have adequate funding to cover all stewardship costs. Funding stewardship is a challenge the conservation community is striving to address in order to ensure a successful legacy of conservation.

ii. Conservation Easements & Stewardship Program Obligations

A conservation easement is a legal agreement a property owner makes with a government entity or a nonprofit organization to restrict activities allowed on the land in order to protect specific

conservation values. Conservation easement restrictions are tailored to the particular property and to the interests of the individual landowner. All FLP conservation easements are held in perpetuity. (FLP Implementation Guidelines, U.S. Forest Service, 2003, 2011).

The purpose of a Forest Legacy conservation easement is to protect important forest resources and support working forests. Depending on the property, the conservation easement may also include provisions to protect and/or enhance the management of wildlife habitat; water resources; rare, threatened, and endangered species; significant natural communities; scenic resources; public access; and other special management areas.

The conservation of a property requires securing funds for due diligence, the conservation easement purchase, and finally, perpetual conservation easement stewardship. Conservation organizations typically identify stewardship funds as the most challenging funds to secure, as many funders are more willing to support the fee or conservation easement acquisition (Doscher and Masland 2011). Land trusts, in addition to several states, recognize the importance of stewardship funding and have begun to integrate stewardship costs into the FLP project budget.

The amount of annual and long-term resources necessary to steward conservation easements is affected by the complexity of easement terms. Stewardship of Forest Legacy conservation easements involves the regular assessment of large blocks of land that support a working landscape. It may also include other provisions such as the management of special resource management areas, review and approval of comprehensive stewardship plans and plan implementation, annual meeting requirements; and issues relating to the public use of the protected property. In addition, Forest Legacy easements may allow for the subdivision or the transfer of individual tracts, multiple Reserved Rights retained by the landowner (such as structures and withdrawal lots), and/or Affirmative Obligations retained by the easement holder (such as habitat management and trail maintenance).

An effective stewardship program is scaled appropriately for the organization in consideration of its stewardship obligations – one size does not fit all. States are faced not only with the responsibility of new conservation easements, but also the ongoing and cumulative obligation to provide for the stewardship needs of existing easements. As states are routinely confronted with demands on annual operating budgets, limited fiscal resources, and difficult program choices, various funding sources and mechanisms are being considered, including the establishment of a dedicated stewardship fund.

C. Report Overview

There are 49 states and 5 territories managing Forest Legacy Programs, organized into 11 administrative regions in the United States. This report examines how states and territories fulfill the stewardship responsibilities required for state-held FLP conservation easement properties. A survey of FLP state program managers was conducted to gather information on program organizational structure, the delivery of stewardship services, and individual funding mechanisms.

The survey responses demonstrate the diverse management and funding practices of state and territory stewardship programs. This report presents survey findings from the 46 survey respondents, summarizing information and presenting data trends. It reviews several key aspects of how states administer stewardship for FLP conservation easements including program administration, funding sources, calculation of costs, assessment of financial adequacy, dedicated stewardship funds, enabling state legislation, and stewardship program issues. Examples of different programs are featured to highlight how certain aspects of state FLP stewardship programs are structured and implemented.

The survey instrument was developed by the Project Manager and associates with input and consent from the project Advisory Team members. The Advisory Team consisted of FLP State Program Managers, a U.S. Forest Service FLP Regional Program Manager, and U.S. Forest Service FLP national field staff. The survey was conducted from March 11 through April 29, 2013, through the University of New Hampshire (UNH) Survey Center. It was offered to states and territories that are enrolled in the U.S. Forest Service Forest Legacy Program: 49 states (all states except North Dakota) and 5 territories (Puerto Rico, Guam, American Samoa, Federated States of Micronesia, and U.S. Virgin Islands). Participants were sent an e-mail invitation and link from their U.S. Forest Service Regional Managers. All surveys were completed over the Internet and sent directly

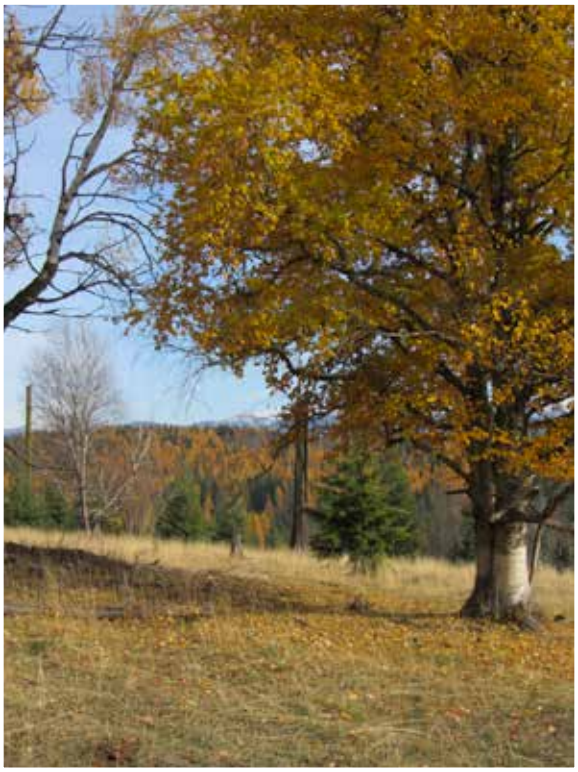
to the UNH Survey Center. Three e-mail reminders were sent to all participants, and followup phone calls were made to states that did not respond. The initial completion deadline was extended to ensure an adequate response rate. The UNH Survey Center collated the responses and provided the data to the Project Manager. Followup phone interviews were conducted with selected states to gain additional stewardship program information.

The survey received an 85% response rate, with 46 surveys completed. Those responding to the survey primarily identified their role as the *State Forest Legacy Program Coordinator* (96%), and 4% as *Other State Agency* (including "Grants Manager" and "Forest Management Chief").

There are several items to note about the data collected. Given the volume of information collected, information points are summarized by percentages (rounded), and states and territories. A list and map of the participating states and territories by region are included in Section 9 – Resources.

The survey was set up in sections, directing participants to complete information in the sections that pertained to their stewardship program. Therefore, information points or questions will have different totals. For example, if the participant only had fee-interest FLP properties and did not have any Forest Legacy conservation easements held by the state or territory, the participant concluded the survey after the fifth question. In another example, if the state or territory did not have a dedicated stewardship fund, the participant skipped a series of questions pertaining to dedicated stewardship funds and continued to the following survey sections.

There are excellent examples and resources available to assist with the development of conservation easement stewardship programs. Literature sources, Web sites, and links to example documents are provided in Section 9 – Resources. States and territories may use these resources to further evaluate, design, and strengthen their state's stewardship programs.



Gold Creek, Idaho
Credit: Karen Sjoquist, Idaho Dept. of Lands

Great Bluffs, Illinois
Credit: Paul Deizman, Illinois Dept. of Natural Resources

3 Forest Legacy Program and Conservation Easement Stewardship Overview

A. The Forest Legacy Program

The purpose of the Forest Legacy Program (FLP) is to protect the environmentally important forest areas that are threatened by conversion to non-forest uses. The FLP functions as a partnership between participating states and the Forest Service, U.S. Department of Agriculture. These entities work together to identify important forest lands and protect them for future generations.

Lands identified for protection are located within state-designated Forest Legacy Areas (FLA). An FLA is a geographic area with important forest and environmental values, that satisfies identified eligibility criteria and has been delineated, described, and mapped in a state's Assessment of Need for the FLP. Acquisition of lands and interests in land for the FLP can only occur within approved FLAs (FLP Implementation Guidelines, U.S. Forest Service, 2003, 2011).

The FLP is a voluntary program, with the states serving as the willing buyer and the landowners as willing sellers of their land or interests in land. In addition to protecting significant forest resources, priority is given to lands that have a suite of important scenic or recreational values, riparian areas, fish and wildlife values including threatened and endangered species, or other ecological values.

B. Forest Legacy Conservation Properties

The FLP ensures properties are permanently protected in perpetuity through several methods: full-fee simple purchase and conservation easements. The most common of these protection methods is the use of conservation easements, enabling the land to remain in private ownership and be protected from development in perpetuity.

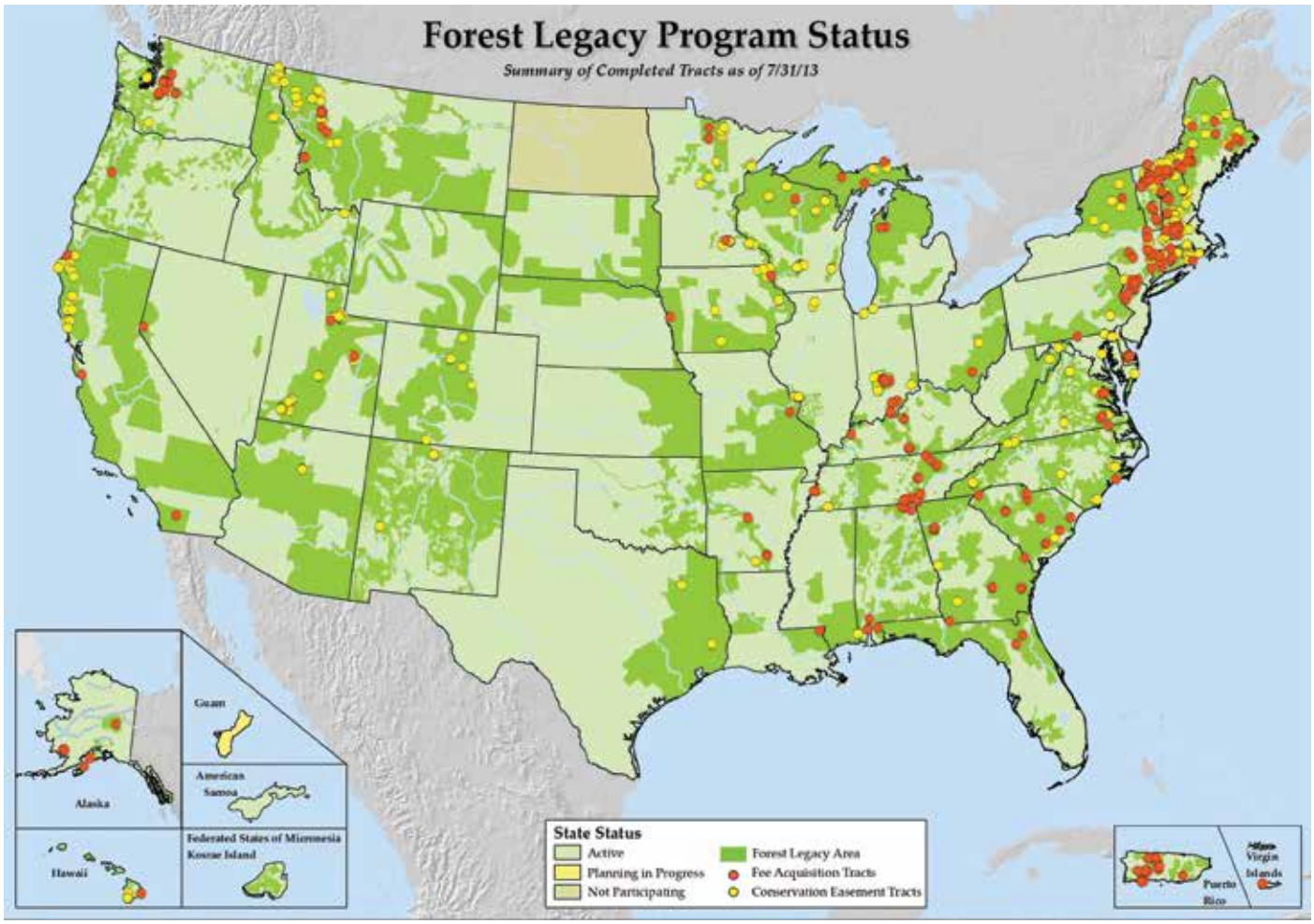
Interests in land, such as conservation easements, may be held by the Federal government or by the state or a unit of local government (if the state chooses the FLP State Grant Option). States or local units of government agree to administer the interest in FLP land when the Federal government holds a conservation easement. As the FLP conservation easement holder, the state agencies assume the stewardship responsibilities, even if stewardship functions are contracted out to another entity.

C. Program Partners

States and territories play a multifaceted role in the protection and stewardship of lands in the FLP. State and territory programs are administered by a designated staff person, often referred to as the State Forest Legacy Program Coordinator. Many states have additional staffing to assist with the various aspects of the program's administration.

Project partners fulfill an important role in the FLP. States and territories often work with nongovernmental organizations (NGOs), such as land trusts or similar organizations, in the development and completion of projects. Land trusts often serve as the principal contact for landowners during the development and execution of the conservation transaction. In some cases, states continue the relationship with NGOs to assist in stewardship administration and monitoring tasks. NGOs may be the fee owner or hold the conservation easement on a property that is used for cost-share purposes in an FLP project.

D. State and Territory Forest Legacy Programs & Conservation Properties: A Snapshot



U.S. Forest Service Northeastern Area, 2013

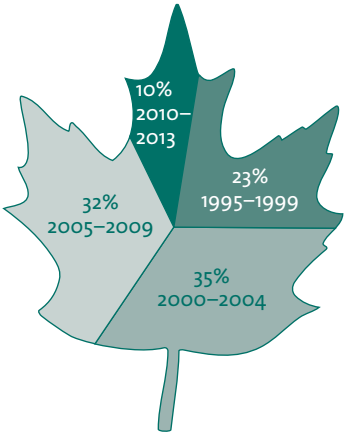
i. State and Territory Forest Legacy Programs 1995–2013

Survey respondents provided a snapshot of the breadth and scope of the Forest Legacy Program.

The participating states and territories represent a range of experience with the program over an 18-year period, from 1995 to 2013. A majority of all state and territory programs, 62%, completed their first project between 1995–2004, while the remaining 38% completed their first projects between 2005 and 2013.

History of State/Territory Forest Legacy Programs
Date First Project Completion

DATE COMPLETED	STATES/TERRITORIES	
	PERCENTAGE	NUMBER
1995–1999	23%	9
2000–2004	35%	14
2005–2009	32%	13
2010–2013	10%	4



ii. Forest Legacy Fee and Conservation Easement Projects

States and territories receive Federal funds for Forest Legacy projects, which may include single and/or multiple tract properties. A majority, 78% (35 states/territories), have received grants for conservation easement projects that are held by the state. Fee interest projects held by a state or territory comprise 71% (32 states/territories). Federally held conservation easements and fee projects have been assigned to 7 states/territories (16%). Federally held conservation easements represent early FLP projects. Projects that included locally held conservation easements and fee interest properties comprised 18% (8 states/territories).

Forest Legacy Fee and Conservation Easement Projects

TYPE FOREST LEGACY PROJECT	STATES/TERRITORIES	
	PERCENTAGE OF ALL STATES/ TERRITORIES	NUMBER OF STATES/ TERRITORIES
State Agency held Conservation Easements	78%	35
State Agency held Fee Simple	71%	32
Federally held Conservation Easement & Fee Interest Projects	16%	7
Municipally held Conservation Easement & Fee Interest Projects	18%	8

Eleven out of the 46 responding state and territory programs (24%) do not have any Forest Legacy conservation easement projects. These respondents concluded the survey at this juncture. The remaining 35 state and territory programs that do manage state Forest Legacy conservation easement projects continued with the survey to provide information about their properties and programs.

iii. State Forest Legacy Conservation Easement Properties

Survey respondents were asked to provide information about the properties conserved through the FLP. Properties are defined as the individual conservation easements and fee transactions that comprise a Forest Legacy project, which may include single and/or multiple properties. Thirty-three participants reported managing 406 FLP conservation easements properties totaling 1,670,948 acres.

E. Administration of State Agency Forest Legacy Conservation Easement Stewardship Programs

Across the country, FLP administration, monitoring, and enforcement responsibilities for State Forest Legacy conservation easements rest primarily on state agency staff.

i. Administration

The majority of the states/territories, 89% (31 states/territories), have primary responsibility for overseeing the administration of conservation easement stewardship programs. The remaining 11% (4 states) utilize a combination of administrative resources: two states use a combination of the Forest Legacy administering agency and another state agency, one state uses another state agency, and another state uses a combination of the Forest Legacy administering agency and an NGO.

State stewardship programs are staffed predominately by a single staff person who is primarily responsible for management of the state's stewardship program (74%, 25 states/territories). The remaining 9 states (26%) rely on multiple staff persons.

All states engage project partners in Forest Legacy conservation easement projects – 46% of the states (16 states/territories) use project partners on every project and the remaining 54% (19 states) use project partners on some projects. Region 9 (Northeast) has the largest number of states (19 states): 5 of those states work with project partners on every project and 14 of those states work with partners on some projects.

ii. Monitoring

In a majority of states and territories (71%, 24 state/territories), the state agency conducts the monitoring on FLP conservation easement properties. Three state programs (9%) conduct monitoring using the combination of the state agency and another state agency. Three state programs (9%) use a combination of the state agency, other state agencies, local governments, and/or NGOs for monitoring. Four states (12%) selected "Other" to describe the entity responsible for monitoring.

In regards to working with NGOs, three states had arrangements other than annual contracts to conduct monitoring. One state noted their contract was multi-year, while another noted that the contract is valid until the NGO is no longer able to monitor the easement.

The number of persons dedicated to monitoring state Forest Legacy conservation easements was evenly split with 50% (17 states) using a single person and 50% (17 states/territories) using multiple persons.

iii. Enforcement

A majority of the enforcement responsibilities for violations rest with the state agency that administers the Forest Legacy Program (74%, 26 states/territories). Five states (14%) used both the state agency and another state agency, and four state programs (11%) identified other arrangements including the state's Attorney General's office and the agency holding the easement.

Sixteen states/territories (47%) had a single dedicated staff person who was responsible for the enforcement of the state's Forest Legacy conservation easement violations, 14 states (41%) states used multiple people, and 4 states (12%) used other staffing arrangements. It was noted by a couple of states that while one person would initiate actions, multiple agency and state staff would be involved in the legal actions.

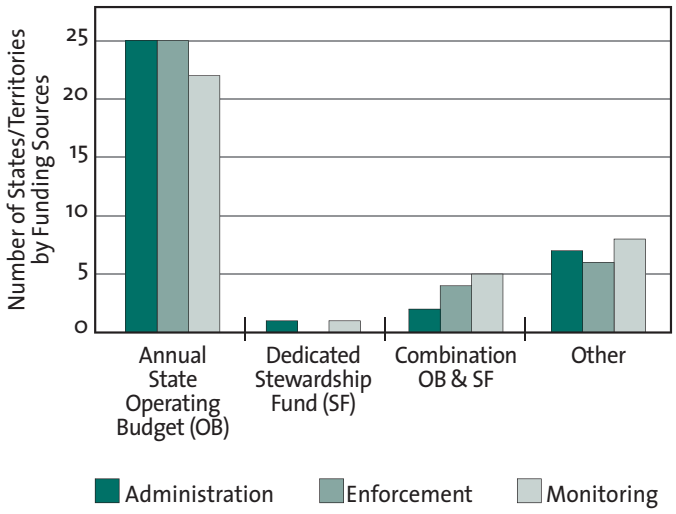
Pierce Pond, Maine
Credit: Steve Brooke, ME Division of Parks and Public Lands

4 Conservation Easement Stewardship Program Funding Mechanisms

A. Funding

Funding the long-term stewardship of FLP conservation easements varies across the United States, reflecting the different approaches state governments have towards protecting natural resources.

Paying for Stewardship: Monitoring, Enforcement and Administration



Moose Mountain, New Hampshire
Credit: Society for the Protection of NH Forests

***Monitoring* – State Agency Collaboration**

"*New Hampshire's Department of Resources and Economic Development is responsible for the monitoring. Monitoring is shared by two state agencies. A DRED regional forester monitors several FLP properties, and a majority of the properties are monitored by the State's Conservation Land Stewardship Program. A Memorandum of Understanding between state agencies establishes the terms and conditions. This arrangement has worked very well. Properties are consistently monitored by trained, professional staff on an annual basis.*"

NEW HAMPSHIRE FLP

i. Administration

Funding for administrative stewardship tasks comes from annual state operating budgets (71%, 25 states/territories), dedicated stewardship funds (3%, 1 state), a combination of the two sources (6%, 2 states), and other sources of funds (20%, 7 states).

Funding Source: Administration
State Forest Legacy Conservation Easements

Funding Source	States/Territories	
	Percentage	Number
Annual State Operating Budget	71%	25
Dedicated Stewardship Fund	3%	1
Combination Annual State Operating Budget & Dedicated Stewardship Fund	6%	2
Other	20%	7

ii. Monitoring

A majority of state programs (60%, 21 states/territories), stated that the annual state operating budget is used to fund monitoring of conservation easements. One state relied on a dedicated stewardship fund; five states (14%) relied on a combination of funds from the annual state operating budget and a stewardship fund. Eight states (23%) used other funding mechanisms, including funds from the annual operating budget for a county; one state used a combination of staff resources from state and local agencies, NGO staff, and volunteers.

Funding Source: Monitoring
State Forest Legacy Conservation Easements

Funding Source	States/Territories	
	Percentage	Number
Annual State Operating Budget	60%	21
Dedicated Stewardship Fund	3%	1
Combination Annual State Operating Budget & Dedicated Stewardship Fund	14%	5
Other	23%	8

iii. Enforcement

Enforcement of conservation easement terms is funded primarily by annual state operating budgets (71%, 25 states/territories). None of the survey respondents indicated that a stewardship fund was solely used for the enforcement of easement terms. Four states, 12%, relied on a combination of funds from the annual state operating budget and a stewardship fund. Six states (17%) relied on other funding sources for enforcement, including allocated state funds on an as-needed basis, and using funds from a county budget.

Funding Source: Enforcing
State Forest Legacy Conservation Easements

Funding Source	States/Territories	
	Percentage	Number
Annual State Operating Budget	71%	25
Dedicated Stewardship Fund	0	0
Combination Annual State Operating Budget & Dedicated Stewardship Fund	12%	4
Other	17%	6

B. Meeting the Financial Needs of Conservation Easement Stewardship

The survey also asked about the adequacy of an agency's existing operating budget to meet the easement monitoring and enforcement needs of FLP easement projects. Six respondents (38%) indicated "Yes"; six respondents (38%) indicated "No". Four respondents (25%) said the question "Did Not Apply" for reasons including not using operating expenses for monitoring, the adequacy of state agency funds, and no enforcement actions have been required to date.

Of the states with dedicated stewardship funds, the adequacy of that fund to meet the financial needs varied widely. Three states claimed that 0 to 10% of financial needs were met, one state claimed 35% of financial needs were met, two states claimed 50% of financial needs were met, and two states claimed 85% to 95% of financial needs were met. It should be noted that a majority of the state-dedicated stewardship funds have been recently created and therefore funding to date has been provided for a few properties. The case studies highlight the characteristics of state-dedicated stewardship funds, including date of formation.

C. State-Dedicated Stewardship Funds

Nine states have established dedicated stewardship funds: Colorado, Hawaii, Idaho, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, and Vermont. Respondents provided information about the purpose and uses of their dedicated stewardship funds. One fund was established in 1983 (Illinois), and the other eight funds were established between 2001 and 2012.

i. Purpose

State-dedicated stewardship funds provided funding for conservation easement stewardship activities on FLP properties, and in some cases other management activities on FLP and other conservation lands. One state has a state-held trust fund in which the funds may be used for a variety of stewardship and management activities on state lands, with conservation easement monitoring being one of the allowed uses. Another state has stewardship funds available for properties with a forest management plan enrolled in the state's forest management program. Another state partners with NGOs to manage the endowment funds established for individual conservation properties. The case studies presented in this report highlight the features of the state-dedicated stewardship funds.

ii. Conservation Easement Properties

Four of the state-dedicated stewardship funds are for FLP conservation easements, and three are for both FLP conservation easement properties and cost-share or match properties held by the State. Non-Federal cost-share is required to receive FLP funding; the value of match properties, either full fee or interests in land, that is not paid for by the Federal government may be dedicated to the FLP as cost-share.

States with dedicated stewardship funds had a total of 170 conservation easement properties whose stewardship needs were met through a combination of stewardship fund and operating budget funding. Four states supported the stewardship activities of 27 conservation easement properties through their dedicated stewardship fund; four states supported stewardship on 126 properties through the state's annual operating budget; and three states utilized both the dedicated stewardship fund and the state operating budget to support stewardship on 17 properties.

Monitoring – State, NGO, and Local Partner Collaboration

"The Idaho Department of Lands is responsible for tracking all monitoring. Some easements we monitor ourselves. We have contracts with 3 different NGOs that monitor certain projects. By having NGOs monitor some of the easements, it allows our agency to focus on the general administration of the program."

IDAHO FLP

"Massachusetts uses a combination of existing state agency staff, local government staff, NGO staff, and volunteers. The multiple players involved in monitoring does require significant time in coordinating the annual monitoring of all 64 tracts in MA."

MASSACHUSETTS FLP

iii. Administrative Oversight

Administrative oversight of a dedicated stewardship fund falls to the state agency that administers the FLP (5 states, 63%), a contracted NGO (2 states, 25%), or another state agency (1 state).

Of the two states partnering with an NGO, a foundation invests the endowment for one state, and an NGO endowment is established for FLP cost-share properties held by that NGO.

Two states (22%) rely on a single person to administer the stewardship fund. Four states (45%) have multiple people dedicated to overseeing the fund, and three states indicated "Other" arrangements.

iv. Funding Sources

The nine states with dedicated stewardship funds identified the funding coming from a mix of sources, including state funds, landowners, NGO partner funds, and an income stream from other sources. Five respondents indicated the landowner provided funds. Five respondents indicated that both project partners and landowners provided funds. Two respondents indicated that stewardship funds come from state funds, and four respondents identified other sources of funds including timber sale receipts and proceeds from an assessment of 4% of the value of timber sold on all property regardless of conservation status.

Dedicated Stewardship Fund: Source of Funds

SOURCE OF FUNDS	NUMBER OF STATES	STATES
State Funds	2	VT, MN
Landowner Provides Funds	5	CO, ME, MN, NH, VT
Project Partner Provides Funds	5	CO, ME, MN, NH, VT
Other Funding Sources	4	HI, ID, IL, MA

Three states require stewardship fund contributions for all Forest Legacy conservation easement grant properties, and six do not require contributions. Contribution amounts per property range from $5,000 up to $15,000 and from $20,000 up to $300,000; four states reported maximum stewardship amounts for a single project as $500,000 and $1.2 million.

Total investments of state stewardship funds ranged in size from under $50,000 (1 state), $50,000 up to $150,000 (1 state), $150,000 up to $900,000 (2 states), and $1,000,000 up to $2,000,000 (2 states).

***Administration* – Effectiveness**

"Maintaining constant communication and visits to the properties. This is the single largest thing that can be done to avoid potential problems with easements."

COLORADO FLP

***Administration* – Coordinating State Agency, Monitoring, and Enforcement Staff**

"Montana has a conservation easement compliance and enforcement committee that is made up of the program coordinator, legal staff, and the lands bureau, including the monitoring person."

MONTANA FLP

Brushwood Community Forest, Vermont
Credit: Kate Willard, VT Agency Natural Resources

5 Determining Stewardship Costs for Conservation Easement Properties

States currently employ two methods, with variations, to determine stewardship costs for Forest Legacy conservation easement properties: flat rate and formula. The flat-rate approach simply provides an established financial contribution amount per property. The formula approach evaluates each property based on an established set of criteria, and calculates the financial contribution accordingly. The case studies in this report provide information on the states which employ flat-rate and formula methods, with additional information available in Section 9 – Resources.

FLAT-RATE CONTRIBUTIONS: Two respondents indicated that contributions were based on a flat rate. Flat-rate contributions were determined by either established guidelines that calculated the contribution amount required for each conservation easement, or on a case-by-case basis.

One state based the stewardship contribution amount per property on the landowner's willingness to contribute. Another state did not have a rate or an established contribution amount per conservation easement property, but requested funds annually from a state-dedicated fund for costs required to complete stewardship activities.

FORMULAS: Six respondents indicated that a formula was used to determine stewardship contributions. Two states have a formula for calculating monitoring costs and easement defense, and four states have a formula for calculating monitoring costs only. Two states have a formal policy provided to landowners and project partners describing the stewardship contribution formula. To date, states' formulas have not been challenged.

Factors used to develop the formula include property acreage, number of parcels, subdivision of the property, withdrawal lots, buildings on the property, and other reserved rights. Five states (71%) collect the stewardship fund contribution at closing. One state collects the contribution prior to closing and two states collect either at or after project closing.

Ossipee Pine Barrens, New Hampshire
Credit: Daryl Burtnett, The Nature Conservancy, NH Chapter

Case Studies

Colorado

Dedicated FLP Stewardship Fund Case Study

STATE: Colorado

NAME: Colorado Forest Legacy Program Endowment Fund

YEAR ESTABLISHED: 2006

PURPOSE: To fund easement monitoring and stewardship of FLP projects in Colorado.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: To provide secure funds for easement monitoring and stewardship of FLP projects in Colorado.

ADMINISTRATION: The Colorado Forest Legacy Program Endowment Fund is held and managed by the Colorado State University (CSU) Foundation. The FLP Program Manager and FLP project partners work with participating landowners to secure a donation.

SOURCE OF FUNDS: Owners of FLP project lands have made contributions to the Fund. To date, $40,000 has been raised. Interest earned on the endowment will be used to fund easement monitoring. To date, funds from the endowment have NOT been used for stewardship; the intent is to increase the fund balance to a more substantial level in case enforcement action is needed. Stewardship activities are funded by grants or by combining site visits with other departments and using state agency funds. The State of Colorado provides salaries for the FLP Program Manager and other state employees working on the program, such as foresters.

RESTRICTIONS: Funds are to be used for the purposes of easement monitoring on FLP sites.

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: Funds from the FLP Endowment Fund may be used for on-the-ground monitoring only.

Catspaw Forest Legacy Project
Credit: Joseph A. Duda, Colorado State Forest Service

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): The FLP Program Manager works with NGOs and other project partners to talk with landowners about a contribution to the Endowment Fund. The typical contribution ranges from $7,500–$15,000. The Fund can accept donations from the public, foundations, etc.

WHEN CONTRIBUTIONS ARE RECEIVED: The FLP Program Manager discusses a contribution to the Endowment Fund with landowners at the beginning of the FLP application process. Fund contributions are made after closing.

SECURITY: The funds are not at risk because they are managed and held by the CSU Foundation, and are not subject to state government or legislative budget debates.

EFFECTIVENESS: When the time comes to access the funds, it will be very effective and will ensure stewardship and monitoring of FLP projects in the future.

POSITIVE ASPECTS: Ensures that monitoring of FLP projects will continue in the future.

NEGATIVE ASPECTS: There is not enough money in the Fund and the amount of funding requested from landowners is too low. However, raising the amount of a contribution from a landowner is a difficult process and will take time.

WHAT CHANGES WOULD BE BENEFICIAL: Raise the funding required of landowners to the Endowment Fund.

ADVICE TO OTHER STATES: Establish an Endowment Fund for monitoring as soon as possible – preferably at the time of the first FLP project. Determine actual annual monitoring costs before asking for a landowner contribution. Talk with FLP managers and conservation organizations to get a feel for what on-the-ground monitoring truly costs and make sure adequate funds are put into the Endowment Fund.

CONTACT: Colorado State Forest Service, Building 1050, 5060 Campus Delivery, Fort Collins, CO 80523-5060.
WEB: http://csfs.colostate.edu/pages/forest-legacy-program.html
Joe Duda **PHONE:** 970-491-6303 **E-MAIL:** jduda@lamar.colostate.edu

Idaho

Dedicated FLP Stewardship Fund Case Study

STATE: Idaho

NAME: Idaho Forest Legacy Program Stewardship Fund

YEAR ESTABLISHED: 2003

PURPOSE: To fund annual monitoring of FLP projects, including: reviewing materials before monitoring visit, travel and staff time monitoring the property, and writing monitoring reports. Funds may also be used for ongoing stewardship: building relationships with landowners through communication, addressing the exercise of reserved rights, property transfer issues and creating relationships with new landowners, dealing with violations, and drafting and amending Forest Stewardship Plans.

ADMINISTRATION: Idaho Department of Lands

SOURCE OF FUNDS: Stewardship funds come directly from the landowner or a land trust partner at closing. There are no other sources of funding for conservation easement stewardship.

Idaho's FLP program is funded primarily though the state's annual Federal FLP administrative appropriation. Other personnel expenses related to oversight and supervision, legal advice and review, and other Forest Legacy Program activities are funded using state dollars.

RESTRICTIONS: Only the interest accrued from the stewardship fund account may be used and not the principal. These funds can only be used on Forest Legacy projects, but do not restrict any activity.

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: Monitoring, landowner communication, and addressing violations, as well as any other tasks to do with "managing" the conservation easement after the purchase of the conservation easement.

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): Flat rate. Idaho FLP staff have researched a formula, but the annual interest rate currently earned on the stewardship account would require a stewardship donation that staff consider unreasonable for any landowner.

WHEN CONTRIBUTIONS ARE RECEIVED: At closing.

SECURITY: Currently, the funds are not at risk. The funds are in a dedicated account that protects the principal and only allows spending of the interest; each year Idaho only allocates a set amount that can be spent that year on stewardship. Idaho is spending more money each year on stewardship activities than is being accrued in the fund.

Gold Creek
Credit: Karen Sjoquist, Idaho Dept. of Lands

EFFECTIVENESS: Idaho is able to cover all expenses related to annual monitoring using the stewardship fund. Unfortunately, other forms of stewardship (landowner communication, addressing potential violations, exercising of reserved rights) take more personnel costs per year than the interest accrued in the account. To address this issue, Idaho FLP staff are currently modifying the stewardship policy. All conservation easement monitoring and some of the stewardship functions will be conducted by state Private Forestry Specialists instead of Forest Legacy personnel. Funding will come from their dedicated personnel funds. Issues related to property transfer, exercising of reserved rights, and addressing violations will come from the stewardship fund.

POSITIVE ASPECTS: Idaho has a dedicated and protected source of funding for our stewardship activities.

NEGATIVE ASPECTS: The amount of interest that accrues each year does not meet the state's annual FLP stewardship expenses.

WHAT CHANGES WOULD BE BENEFICIAL: To have the stewardship funds invested in a way to earn more interest. It is currently invested conservatively so as not to lose principal.

ADVICE TO OTHER STATES: In Idaho, a dedicated stewardship fund is critical as there are no other sources of state funds permitted for this purpose. The Idaho Department of Lands (IDL) holds 13 Forest Legacy conservation easements and has one part-time staff person coordinating the statewide program. The Idaho FLP Program Manager's advice to states with limited funding sources, training, and/or staff would be to partner with land trusts or other agencies with better equipped programs to conduct stewardship activities.

ADDITIONAL COMMENTS: Idaho owns 13 Forest Legacy conservation easements. The state directly stewards four of these conservation easements and has collected stewardship funds from the four easement grantors. For the other nine conservation easement properties, the state has entered into agreements with various land trusts to conduct monitoring and stewardship. In those cases, the land trusts collected the stewardship donations from the grantors. In general terms, the land trusts have agreed to:

- Annually monitor the conservation easements
- Provide monitoring reports annually to IDL
- Only use the accrued interest for stewardship
- Transfer the money to IDL if they can no longer perform their stewardship activities

It is Idaho's preference to partner with land trusts for stewardship activities. FLP staff time is limited. Land trusts typically have the tools, training, and other sources of funds that can be used for stewardship.

CONTACT: Idaho Dept. of Lands, 3284 W. Industrial Loop, Coeur d'Alene, ID 83815-8918 **PHONE:** 208-769-1525
WEB: http://www.idl.idaho.gov/forest_legacy/legacy-1.htm
Karen Sjoquist **E-MAIL:** ksjoquist@idl.state.id.us

"We base our flat rate on endowments that we've collected in the past and how many reserved rights the grantor is maintaining. For instance, if a landowner reserves the right to subdivide a section, we would ask for more than we would ask from a landowner who does not want to allow subdivision. We are lucky that almost all of our conservation easements are in relative proximity to each other so there is some savings when it comes to monitoring. It's so hard to predict how much it will cost to steward a single property, so that's why we suggest a flat rate."

Illinois

Dedicated Stewardship Fund Case Study

STATE: Illinois

NAME: Forestry Fund

LINK: http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1736&ChapterID=44
IL_Forest_Development_Act_Law_2009.pdf
IL_Forestry_Development_Cost_Share_Program.pdf

YEAR ESTABLISHED: 1983

PURPOSE: The Forestry Fund provides financial support for forest management and conservation easement stewardship activities on properties that have a forest management plan. Two primary uses include:

- State-held conservation easement properties may access the fund for purposes that include forest management and conservation easement stewardship (such as administration and monitoring). Properties must have a forest management plan to be eligible.
- The landowner cost-share program provides funds to landowners to implement forestry management practices (i.e. tree planting, invasive control, wildlife management). Landowners are obligated to file a forestry management plan to be eligible for the funds and to receive a reduction in property taxes.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: The premise for the Forestry Fund was initiated by the Division of Forest Resources, State Forester to help meet the forestry resource needs of the state. It was a 3-year process to enact the legislation.

ADMINISTRATION: The Department of Natural Resources (DNR) administers the fund. The Division of Forest Resources requests funds annually. The fund is spent down and replenished annually.

SOURCE OF FUNDS: Four percent of all timber harvests in the state are dedicated to the Forestry Fund.

RESTRICTIONS: The Forestry Fund is very flexible in terms of how the funds may be used for forest management and conservation easement stewardship activities. The primary condition is the filing of a forestry management plan to identify management. The annual allocation of funds is at the discretion of the DNR.

Great Bluffs
Credit: Paul Deizman, Illinois Dept. of Natural Resources

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: FLP properties have a forest management plan and are thereby eligible to receive funding. Use of the fund for forestry management and stewardship purposes is very flexible, and determined by the Department of Natural Resources, Resources Conservation Fiscal staff. Law and policy allow funds to be used for FLP stewardship costs including administration, monitoring, and enforcement (if needed). The Fund is currently used to cover stewardship administration costs and the annual monitoring costs of 10 FLP properties.

OTHER ELIGIBLE ACTIVITIES: Landowner cost-share program, other forest management activities.

HISTORY OF FLP CONTRIBUTIONS AND USES: The fund is available to all FLP conservation easement properties.

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): The FLP State Coordinator tracks the costs of conservation easement stewardship administration and monitoring on FLP conservation easement properties, and submits requests to the Office Chief to whom the Division of Forest Resources State Forester reports. There is no formula applied, except the cost caps on certain forestry practices available to forest stewardship landowners.

WHEN CONTRIBUTIONS ARE RECEIVED: Quarterly from more than 400 licensed timber buyers who had collected the 4% fee from landowners on whose land they purchased timber.

SECURITY: It is a dedicated fund that is fairly secure. The fund was swept once by the governor, and the courts deemed the action illegal.

EFFECTIVENESS: The fund has effectively met the financial needs of conservation easement stewardship administration and monitoring for FLP projects.

"Everyone wins when there is a consistent investment in property management and conservation easement stewardship."

POSITIVE ASPECTS:

- Provides a reliable, solid funding mechanism.
- Supports good, popular programs.
- Provides flexibility to use the fund for management and stewardship (administration, monitoring) purposes.

NEGATIVE ASPECTS: The fund could be subject to changes in priorities and use during political shifts. This shift has only happened once since 1983.

WHAT CHANGES WOULD BE BENEFICIAL: Ideally, the dynamics of the fund could be changed to safeguard against potential political shifts in the Department (DNR), legislature, and/or governor's office that could dilute the law and shift how the money is spent. To safeguard the intent of the law, changes could be made to designate percentages of the fund's revenues for conservation easement stewardship costs, the landowner cost-share program, and other programs.

ADVICE TO OTHER STATES: The strength of the fund is that the legislative law has teeth – landowners are obligated to file a property forestry management plan in order to receive funds. This fully engages the landowners in the management of forest lands, and also lends to the popularity of the fund.

CONTACT: Illinois Dept. of Natural Resources, Division of Forest Resources, One Natural Resources Way, Springfield Il, 62702-1271 **PHONE:** 217-782-3376
WEB: http://dnr.state.il.us/conservation/forestry/Legacy/
Paul Deizman **E-MAIL:** paul.deizman@illinois.gov

Maine

Dedicated Stewardship Fund Case Study

STATE: Maine

NAME: There are several individual stewardship endowment funds that are held by the Maine Community Foundation. These dedicated funds are property specific.

YEAR ESTABLISHED: The first fund was established 2001. As of 2009, all conservation easement projects, including FLP conservation easement properties, are required to establish an endowment fund.

PURPOSE: To provide funding for annual stewardship activities on state-held conservation easement properties.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: The realization that there were cumulative expenses from annual conservation easement monitoring and potential future litigation.

ADMINISTRATION: Landowners and/or project partners provide funds directly to the Maine Community Foundation (MCF). The MCF enters into a designated endowment agreement with the landowner and/or NGO. The MCF serves as financial advisor, and recommends the annual withdrawal amount (interest only). The State of Maine is the recipient of the net income for designated stewardship purposes.

SOURCE OF FUNDS: A separate endowment fund is established for each conservation easement property. Landowners and/or project partners provide funds directly to the Maine Community Foundation.

RESTRICTIONS: A majority of the funds are set up to provide monies specifically for a designated conservation easement property.

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: Eligible stewardship-associated costs include monitoring, litigation, and administration costs.

HISTORY OF FLP CONTRIBUTIONS AND USES: The first fund was established 2001. As of 2009, all purchased state-held conservation easement properties, including FLP properties, are required to establish an endowment fund.

Pierce Pond
Credit: Steve Brooke, ME Division of Parks and Public Lands

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): Formula

LINK: ME_Determining_Monitoring_Costs_Stewardship_Endowment_Levels_2009.pdf

WHEN CONTRIBUTIONS ARE RECEIVED: The landowner and/or project partner provide contributions before closing, at project closing, or after closing. The funds are provided directly to the Maine Community Foundation.

SECURITY: The funds held by the Maine Community Foundation are completely secure, and may only be used for their intended purpose.

EFFECTIVENESS: The stewardship endowment program has been highly effective.

POSITIVE ASPECTS: The expectation is that the property endowment will provide funding that enables monitoring to be conducted annually and should cover the majority of the costs of litigation.

Project partners know that the contribution is expected for each conservation easement property, and build the cost into the project budget.

NEGATIVE ASPECTS: None.

WHAT CHANGES WOULD BE BENEFICIAL: Enabling additional monies to be donated into a fund that could be used for stewardship activities on other state-held conservation easement properties.

ADVICE TO OTHER STATES: Utilizing an outside investment partner – the Maine Community Foundation – has worked well. It has protected the funds and ensured they will be used for intended stewardship purposes. Even though the funds are conservatively invested and annually allotted, it has helped the state meet its stewardship obligations.

CONTACT: Maine Dept. of Agriculture, Conservation and Forestry, Division of Parks and Public Lands, 22 State House Station, Augusta ME 04333-0022 **PHONE:** 207-287-4963
WEB: http://www.maine.gov/doc/parks/forestlegacy.shtml
Dave Rodrigues **E-MAIL:** david.rodrigues@maine.gov

Tumbledown
Credit: Steve Brooke, ME Division of Parks and Public Lands

"Without a stewardship endowment fund it may not be possible to meet statutory requirements to conduct monitoring and meet stewardship obligations."

Massachusetts

Dedicated FLP Stewardship Fund Case Study

STATE: Massachusetts

NAME: Conservation Trust Fund.

The Commonwealth of Massachusetts has established the Conservation Trust Fund which enables the public and organizations to donate money dedicated to a wide variety of conservation and recreation purposes. State parks have "iron rangers", which are permanent collection boxes at state parks. Funds from these boxes are deposited in the Conservation Trust Fund. The MA FLP can use these funds for stewardship but has not chosen to do so yet.

SEPARATE PROPERTY STEWARDSHIP ENDOWMENT FUNDS: The Commonwealth of Massachusetts does not have a dedicated FLP Stewardship Fund but NGO project partners have established endowments for stewardship. These funds may come from either donations or proceeds from timber sales. A typical donation is $6,000 – $10,000 and interest from the endowment may be used for annual monitoring.

LINKS: MA_ Trust_ Fund_Law.pdf
MA_ Trust Fund.pdf

YEAR THE CONSERVATION TRUST FUND WAS ESTABLISHED: 1990

PURPOSE: To advance the recreational and conservation interests of the Commonwealth.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: The Fund was established by the State Legislature to provide a mechanism through which state forests, parks, and environmental programs can accept gifts and donations.

ADMINISTRATION: The Commissioner of the Department of Conservation and Recreation is responsible for administering the Conservation Trust Fund.

SOURCE OF FUNDS: Donations, bequest, restitution, and gifts.

RESTRICTIONS: Expenditures must meet one of the four criteria described below.

Brushy
Credit: Mike Fleming, MA Dept. of Conservation and Recreation

ELIGIBLE ACTIVITIES FOR STATE FLP PROPERTIES: The Conservation Trust Fund has criteria for expenditures. The expenditure must meet one of four objectives to help the Department of Conservation and Recreation (DCR) reach its goal of enhancing visitors' experience:

- Investing in MA parks and properties (examples include trail enhancement, plantings, interpretive signage, benches, bike racks.)
- Expanding programming as a means to engage people to visit DCR properties and explore what sites have to offer.
- Strengthening partnerships that foster civic engagement for the agency and a broad sense of stewardship for Massachusetts' natural resources.
- Maximizing resources to get the most from DCR's money and staff efforts.

The Conservation Trust Fund has not been used by the FLP as of yet. The FLP Project Manager's staff time is funded by the annual operating budget for the Department of Conservation and Recreation. Easement monitoring and other stewardship activities are also funded by the annual operating budget.

HISTORY OF FLP CONTRIBUTIONS AND USES: The Conservation Fund was established in 1990.

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): FLP project partners work with landowners on a case-by-case basis to request donations for stewardship. Donations typically are given to NGOs.

WHEN CONTRIBUTIONS ARE RECEIVED: After property closing.

SECURITY OF THE CONSERVATION TRUST FUND: The funds placed in the Conservation Trust Fund are very secure.

EFFECTIVENESS: Very effective mechanism to support parks and conservation in general in MA.

POSITIVE ASPECTS OF THE CONSERVATION TRUST FUND: Enable the public and foundations to support conservation and natural resource protection.

NEGATIVE ASPECTS: None

WHAT CHANGES WOULD BE BENEFICIAL: No changes

CONTACT: Massachusetts Dept. of Conservation and Recreation, Bureaus of Forest Fire Control and Forestry, 335 W. Boylston Street, Clinton, MA 01510-4401
WEB: http://www.mass.gov/eea/agencies/dcr/conservation/forestry-and-fire-control/forest-legacy-program.html
Mike Fleming, FLP Program Manager and Sharon Hoey, Trusts Development Manager, MA Department of Conservation and Recreation. **PHONE:** (978) 368-0126 x114
E-MAIL: mike.fleming@state.ma.us

"Massachusetts Conservation Trust will provide the FLP with a source of funds for long-term monitoring of properties. The Commonwealth has 89 tracts enrolled in the FLP and an additional 17 tracts pending, all of which will require a substantial stewardship commitment."

Minnesota

Dedicated Stewardship Fund Case Study

STATE: Minnesota

NAME: The Forests for the Future Conservation Easement Account. This account is a part of the Minnesota Forests for the Future Program.

LINKS:
MN_MS84.66_ Forests_Future_Program.pdf
MN_MS84.68_Forests_Future_CE_Account_Statute_2012.pdf
MN_MFF_Monitoring_Stewardship_Overview_2011.pdf

YEAR ESTABLISHED: 2011

PURPOSE: Forests for the Future Conservation Easement Account: Managing Forests for the Future conservation easements are held by the Department of Natural Resources, including costs incurred from monitoring, landowner contacts, record keeping, processing landowner notices, requests for approval or amendments, and enforcement.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: The Forests for the Future Conservation Easement Account was initially established to accept $750,000 in stewardship endowment funds that were part of the state's appropriation for a conservation easement project.

ADMINISTRATION: The Minnesota Department of Natural Resources administers the fund which has provided a conservative investment strategy yielding an average rate of return of approximately 3%. Four percent of the account balance on July 1 is annually appropriated to the Commissioner of Natural Resources, and may be spent only to cover the costs of conservation easement stewardship purposes as described.

SOURCE OF FUNDS: The Forests for the Future account receives donated and appropriated funds from conservation easement projects. To date, the state has appropriated funds for two conservation easement properties. Landowner contributions may be considered for future FLP conservation easement properties.

RESTRICTIONS: Stewardship-related expenses for the FLP conservation easement properties.

Across Long Lake
Credit: Richard Peterson, MN Dept. Natural Resources

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: Conservation easement stewardship costs including monitoring, landowner contacts, record keeping, processing landowner notices, requests for approval or amendments, and enforcement.

OTHER ELIGIBLE ACTIVITIES: The Forests for the Future account supports the costs of managing Forests for the Future conservation easements.

HISTORY OF FLP CONTRIBUTIONS AND USES: Since 2011, the state has appropriated $870,000 for two conservation easement projects.

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): Formula is used to determine contributions per conservation easement property. The formula is based in part on Maine's formula (see Report Section 9 – Resources) for estimating monitoring costs for large landscape projects and in part on over 10 years of monitoring history to establish monitoring costs. There is currently no written policy.

WHEN CONTRIBUTIONS ARE RECEIVED: At project completion.

SECURITY: Very secure – the funds have been secured through an appropriation secured under a state constitutional amendment for habitat protection.

EFFECTIVENESS: Effective means of meeting annual and projected monetary requirements of stewardship obligations.

POSITIVE ASPECTS:

- Existence of the dedicated account.
- Robust amount of funds in the account to meet stewardship costs.
- Flexibility by Department of Natural Resources for all stewardship-related activities.

NEGATIVE ASPECTS:

- Flexibility – while a benefit in some ways, clarification from the legislature is being sought on whether the funds can be used for other conservation easement properties held by the state.
- Bookkeeping and reporting take time.

WHAT CHANGES WOULD BE BENEFICIAL:

- Flexibility of the fund's use needs to be better defined to make the fund more widely available for all Forest Legacy conservation easements retroactively (pre 2011).
- Building a common stewardship approach for all state-held conservation easements would strengthen the state's program in the long term.

CONTACT: Minnesota Dept. of Natural Resources, Division of Forestry, 1810 NW 30th Street, Faribault, MN 55021-1843 **PHONE:** 507-333-2012, x222
WEB: http://www.dnr.state.mn.us/forestlegacy/index.html
Dick Peterson **E-MAIL:** richard.f.peterson@state.mn.us

"Recommendation to other state programs that currently do not have a dedicated fund for conservation easement stewardship: You won't get it unless you ask for it."

New Hampshire

Dedicated Stewardship Fund Case Study

STATE: New Hampshire

NAME: Land Conservation Endowment Program

LINKS:
NH_LCIP_Monitoring_Endowment_2000.pdf
NH_Statute_CT_Lakes_Monitoring_Endowment_2002.pdf
NH_FL_Policy_Stewardship_CE_2013.pdf

YEAR ESTABLISHED: 1994 and 2003

PURPOSE: To assure that conservation easement lands held by the State of NH, Department of Resources and Economic Development (DRED) are appropriately and effectively monitored, and the state's legal obligations are met.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: In 1994 the State of NH's Land Conservation Investment Program (LCIP) established the Land Conservation Endowment Program (LCEP) to serve as a stewardship endowment fund for state-held conservation easement properties. DRED became a participant to the LCEP in 2003 with a $1.25 million contribution for the Connecticut Lakes Headwaters Project, an FLP conservation easement property. The fund usually generates a rate of return of 3% to 4% annually.

ADMINISTRATION: NH Department of Treasury oversees the investment of the fund and determines the annual drawdown amount to the Office of Energy and Planning (OEP). The OEP conducts conservation easement monitoring for state-held properties. Only the fund's interest is used annually. DRED has an MOU for conservation easement stewardship services on FLP properties.

LINK: NH_FL_Guidelines_CE_Stewardship_Monitoring_2012.pdf (MOU DRED-OEP, page 22)

SOURCE OF FUNDS: LCIP endowment investment of state funds (1994). DRED receives an annual check from the LCIP endowment fund for the purposes of off-setting the cost of DRED's monitoring of state LCIP properties. Source of funds contributed by FLP conservation easement projects: In 2003, the CT Lakes Headwaters Project endowment fund was established at time of project closing, funded by (non-Federal) project contributions. As of 2012, a landowner/project partner contribution is required for all FLP conservation easement properties at time of project closing.

Ossipee Pine Barrens
Credit: Eric Aldrich, The Nature Conservancy, NH Chapter

RESTRICTIONS: CT Lakes Headwaters is a separate account that has a pro-rated formula. There is an agreement between the parties that includes a formula for how the funds are pro-rated, and DRED receives funds for annual conservation easement administration and monitoring costs. The restriction is that only the interest may be used. All FLP conservation easement property fund contributions from 2012 forward will be used for FLP conservation easement stewardship purposes including administration, monitoring, and enforcement.

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: Conservation easement stewardship costs including administration, monitoring, and enforcement.

HISTORY OF FLP CONTRIBUTIONS AND USES: The first FLP contribution was for a 2003 project. In 2012, DRED implemented a policy requiring a stewardship contribution be included in the FLP application. The first project to come in under the guidelines is expected to close in 2013.

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): Formula

LINK: NH_FL_Guidelines_CE_Stewardship_Monitoring_2012.pdf
(Endowment Contribution Guide, page 30)

WHEN CONTRIBUTIONS ARE RECEIVED: At time of property closing.

SECURITY: This is a dedicated fund and is secure by law. It cannot be raided without legislative action to amend the state statute.

EFFECTIVENESS: Highly effective way to provide professional management services and meet the stewardship obligations on conservation easement properties.

"A dedicated stewardship fund ensures that the state will be able to protect the natural resources and environmental quality for generations."

POSITIVE ASPECTS: While it was initially difficult to establish an endowment fund in 1994, once it was operational the long-term benefits of being able to effectively care for the land and protect the public's rights were affirmed. Following years of discussion, FLP project partners and landowners accept that stewardship costs are part of a successful FLP application, and plan accordingly. The availability of the funds enables the state to uphold its legal responsibilities, and will provide financial support to do so in the future. Working with the Office of Energy and Planning Conservation Lands Stewardship Program offers a third party with the sole duty of conservation easement monitoring, which provides an at-arms-length service.

NEGATIVE ASPECTS: The fund should have been established earlier and the policy to require stewardship endowment from FLP projects implemented sooner. The state is playing 'catch up' in developing a solid fund for stewardship.

WHAT CHANGES WOULD BE BENEFICIAL: None

ADVICE TO OTHER STATES: If your state does not have a stewardship endowment fund now, establish it as soon as possible. As much as it may hurt to take funds from other activities, or to require funds from landowners, it is imperative. The long-term benefit outweighs the short-term start up pains.

CONTACT: New Hampshire Department of Resources and Economic Development, Division of Forest and Lands, 172 Pembroke Road, P.O. Box 1856, Concord, NH 03302-1856
PHONE: 603-271-2214
WEB: http://www.nhdfl.org/land-conservation/forest-legacy-program.aspx
Bill Carpenter **E-MAIL:** William.carpenter@dred.state.nh.us

Vermont

Dedicated Stewardship Fund Case Study

STATE: Vermont

NAME: Land and Facilities Trust Fund

LINK: The Lands and Facilities Trust Fund website is where you can view the annual reports' description of how each year's expenditures were allocated, including those which may have been used for easement stewardship. Note that the statute reference on this Web site is NOT correct.

Beginning in 2004, the amount of trust fund monies available for stewardship projects is equal to five percent of the moving average of the fund's market value over the prior 12 quarters.

YEAR ESTABLISHED: It was established in 2001 by Act 61, Section 53 and the corresponding legislation is 3 VSA, Chapter 51, Section 2807.

LINK: VT_3VSA 2807_Land_Facilities_Trust_Fund.pdf

PURPOSE: For projects that aid the management of Vermont Agency of Natural Resources (ANR) lands, facilities, and recreational assets.

REASON THE FUND WAS ORIGINALLY ESTABLISHED: To provide funding for eligible activities including repair and maintenance of state parks and conservation camps; maps and surveys of land boundaries; resource inventories; maintenance of ANR land boundaries, roads, trails, and facilities; and other stewardship activities.

ADMINISTRATION: Vermont Agency of Natural Resources, Department of Forest, Parks and Recreation administers the fund. The agency's business office is responsible for the fund's investment and determining the annual disbursement.

SOURCE OF FUNDS: Revenues from timber sales receipts, private donations, landowners. Source of funds contributed by FLP conservation easement projects: Conservation easement landowner contributions are used. FLP properties could also use monies from other sources such as timber sales revenue.

RESTRICTIONS: Only the interest generated from the principal is used on an annual basis at the rate of five percent of the moving average of the fund's market value over the prior 12 quarters.

Green Mountain Wildlife Corridor
Credit: Kate Willard, VT Agency Natural Resources

ELIGIBLE ACTIVITIES FOR FLP PROPERTIES: Monitoring FLP conservation easements. Does not include funding enforcement actions. No other state conservation easements use the fund for monitoring.

OTHER ELIGIBLE ACTIVITIES: Management activities on state-owned lands, see above.

HISTORY OF FLP CONTRIBUTIONS AND USES: Beginning in 2009, landowners of FLP conservation easement properties contribute to the fund. As of June 2013, $23,000 has been contributed from two FLP conservation easement properties: Property 1, $13,000 (2009), and Property 2, $10,000 (2011).

HOW CONTRIBUTIONS ARE DETERMINED (FORMULA, FLAT RATE, OTHER): Formula. The state's formula is based on the Vermont Land Trust model.

LINK: VT_ANR_CE Formula_2013.pdf

WHEN CONTRIBUTIONS ARE RECEIVED: At time of closing. The first contribution was made within a year of closing during calendar year 2013, all others at time of closing. That contribution will be reflected in the January 2014 report to the legislature.

SECURITY: The fund could get raided for other state purposes. It would be difficult to raid the fund, given its stated purpose and the political ramifications.

EFFECTIVENESS: The fund ensures a very effective means of providing financial resources for conservation easement stewardship monitoring.

POSITIVE ASPECTS: It is an internal fund, which allows flexibility on how the monies may be used. The fund is overseen by the Forest and Parks Department (not another state agency such as Department of Finance), and approval for expenditure is recommended by an internal Lands Team. This allows for flexibility on how to use the funds and for accessing the funds as needed.

The state treasurer has a good track record with sound investment, and the fund has done well in providing moderate and steady growth.

NEGATIVE ASPECTS: Technically the fund could be raided, although not likely.

WHAT CHANGES WOULD BE BENEFICIAL: There is a perception that the fund could be raided by the state for other purposes. This limits contributions from other sources, such as private funders, foundations, and other state sources such as the Vermont Housing Conservation Board.

ADVICE TO OTHER STATES:

- Having a fund established makes it easy to accept and meet the responsibilities of conservation easement stewardship.
- Flexibility in how the monies come in and out of the fund is a key factor.
- Establishing a fund takes time – it took the state 2 years to create the fund.

CONTACT: Vermont Agency of Natural Resources, Department of Forest, Parks and Recreation. 10 South, 103 South Main Street, Waterbury, VT. **PHONE:** 802-241-3697
WEB: http://www.vtfpr.org/lands/flp.cfm
Kate Willard **E-MAIL:** kate.willard@state.vt.us

"Vermont is lucky to have such a flexible fund established to provide for monitoring on Forest Legacy conservation easement properties."

6 Enabling Legislation and Stewardship Funding

For the purpose of this project the term "enabling legislation" is being used to describe state legislation that gives appropriate officials the authority to implement programs and enforce laws. It is difficult to compare legislation adopted by states to support FLP stewardship activities because legislation is most often adopted to provide authority to state agencies for a wide variety of natural resource conservation and management programs and activities. When states are considering establishing an FLP stewardship fund or another dedicated source of funds, they need to assess whether existing state legislation already enables this activity.

The survey asked if each state had enabling legislation to provide the authority needed to raise stewardship funds. Thirty-two states responded to this question. Ten said "Yes" (31%), 12 replied "No" (38%), and 10 respondents (31%) said their state does not have enabling legislation. Four respondents described limitations to their state's enabling legislation. One state replied that it is not enabled to explicitly raise money for the fund, only "develop programs and activities promoting stewardship of forest and other lands." Another state replied that funds collected from landowners for FLP stewardship are deposited into an account for another program.

Thirteen states provided a reference to state legislation relative to FLP stewardship. Activities enabled by this legislation vary widely, with most legislation providing definitions of conservation easements and other tools. The case studies provided include links to enabling legislation permitting dedicated funds, or access to funds, for stewardship purposes.

Seven states responded to the question asking how a lack of enabling legislation impacts program funding. Four states (57%) said the lack of legislation impacts the type of funds to be raised. Two states (29%) said it impacts state or partner implementation of stewardship; three states (43%) selected "Other Impacts", including funds being directed to the State's General Fund.

Hancock, Vermont
Credit: Kate Willard, VT Agency Natural Resources

7 Summary of State Stewardship Program Administration and Funding Mechanisms

A. How Adequate is State Stewardship Funding? A Self-Assessment

States and territories were asked to conduct a self-assessment regarding the adequacy of their stewardship funding in order to meet the stewardship needs of their FLP properties (including state operating budget, dedicated stewardship fund, and/or other sources).

Approximately half of the respondents (49%, 15 states/territories) identified their stewardship funds as inadequate, while the other half (51%, 16 states/territories) stated funds met expectations, with one state noting their funds far exceed expectations.

States and territories also responded to a question inquiring about the effectiveness of their stewardship program administration in meeting the stewardship needs of their Forest Legacy properties. Based on the 31 responding states/territories, 68% (21 states/territories) assessed their programs as effective or very effective, 16% (5 states/territories) noted their programs as neither effective nor ineffective, and the remaining 16% (5 states/territories) assessed their program administration as ineffective.

States and territories were asked if stewardship activities would benefit from the establishment of a dedicated stewardship fund. Sixty percent of respondents said "Yes" (12 responses); only one respondent said "No". Six respondents answered "Don't Know", indicating the need for additional information regarding dedicated stewardship funds.

While land trusts around the country have established separate defense funds or have joined in the Land Trust Alliance to cover enforcement and litigation costs, there are no states that have established a separate fund for legal defense (see Section 7.E.).

B. State Stewardship Program Strengths

States and territories identified what has worked particularly well in their stewardship of FLP projects. There were three areas of identified strengths. As will be seen in the next section, what is an area of strength in one state is a challenge in another – demonstrating again the individual nature of state stewardship practices.

1. Adequate funding and resources to accomplish all stewardship activities in a timely and effective manner. Key elements include:
   - The collection of stewardship endowment funds from the landowner at the close of a project to support future stewardship activities.
   - The implementation of a Forest Legacy conservation easement stewardship formula and policy for endowment contribution, and the collaboration with other state agency staff responsible for the stewardship to ensure that stewardship needs will be met now and in the future.
   - Utilizing other funding sources to provide landowners with incentives to participate in forest management on conservation easement properties.
   - Utilizing aerial monitoring, and/or access to aircraft, to monitor large parcels.
2. Trained personnel to conduct administration and monitoring activities, which are crucial to the successful stewardship of lands. Key elements include:
   - Adequate staffing and time to accommodate program responsibilities.
   - Trained and dedicated staff.
   - Consistency of state agency acquisition staff and monitoring staff.
   - Coordinating with state field personnel and partnering organizations knowledgeable about the conservation properties.
   - Maintaining communications and partnerships with administrative and monitoring field staff.
   - Efficiently utilizing staff for stewardship responsibilities combined with other property activities.
   - Partnering with NGOs to monitor conservation easement properties and train volunteers.
   - Maintaining the stewardship program administration oversight with the state agency.

3. Providing support and maintaining consistency in all aspects of the program. Key elements include:
    - Consistently monitoring properties annually for compliance.
    - Building strong landowner relationships.
    - Working with project partner organizations, including land trusts and other NGOs, and collaboration with stakeholders.
    - Support from the U.S. Forest Service Forest Legacy Program Manager.

C. State Stewardship Program Challenges

States and territories identified their biggest challenges with effectively stewarding the state's Forest Legacy conservation easement properties. While many states and territories accomplish the primary stewardship functions with the financial resources available, the most frequently cited challenge was the need for additional funding. Many of the other identified stewardship program's needs, such as increased staffing, would be resolved with additional financial resources. Three areas of challenges were identified:

1. Securing additional funds to meet current and future stewardship requirements.

    States identified the need for stewardship funding on current Forest Legacy conservation easements as well as other state easement properties. Cited needs include:
    - Financial support for monitoring conservation easements.
    - Funding for stewardship administration.
    - Establishment of a state stewardship fund and collection of endowment funds to support state stewardship and enforcement expenses.
    - Staff costs to steward conservation easements protected prior to the implementation of a state stewardship fund contribution policy.
2. Providing additional staffing to adequately meet stewardship program administration and monitoring needs. Factors contributing to staffing needs were identified:
    - Declining state resources and state staff.
    - Workload demands and time constraints on state agency staff.
    - Increased administration and monitoring workload required for Forest Legacy projects.
    - Demands on staff time due to the large acreage size of Forest Legacy parcels, and the complexity of projects.

    In addition to needing additional staff, other personnel needs included:
    - Recruitment of new monitoring personnel
    - Providing regular training for all field personnel conducting monitoring.
3. Addressing stewardship program needs.
    - The need to develop policies to provide program guidance.
    - Completing a comprehensive review on an annual basis for large-acreage properties.
    - Dealing with changes in ownership and maintaining constant communications with landowners.
    - Communicating the benefits of a relationship-based approach rather than an enforcement approach.
    - Addressing easement violations discovered during monitoring.
    - The undertaking of future enforcement actions in the event of an encroachment.

D. Components of an Effective State Forest Legacy Stewardship Program

There are several key components to an effective stewardship program, whether it is operated by a state, territory, or land trust. Each organization should tailor its stewardship program to meet the specific property and program needs, as well as take into account the legal, financial, and political considerations. Surveyed states identified what they need to fulfill their stewardship responsibilities. The following summary of recommended program elements incorporates the survey findings with the information from successful land trust stewardship programs.

1. Have a program and financial assessment and determination of need in place.
    - Assess stewardship needs for existing conservation easement properties and new incoming projects to determine the total cost of providing stewardship services.
        - Track immediate and long-term costs over a 1- to 3-year period.
        - Include all relevant costs such as personnel, supplies and equipment, travel and mileage, storage and records management, legal and enforcement.

2. Establish standards and policies.
   - Guidelines for administration, monitoring, and enforcement.
     - Funding Cost Guidelines: Formula, Flat Rate, Other Contributions.
     - Record keeping protocols.
     - Monitoring policy and forms.
     - Enforcement policy and procedure.
   - Memorandums of Understanding with partner organizations to outline responsibilities and services.
   - Baseline Documentation Reports for all conservation easement properties.
   - Forest Stewardship Plans for all conservation easement properties.
3. Secure adequate funding to support stewardship activities including administration, monitoring, and enforcement. Funding options include reliance on a single source or a combination of sources.
   - State annual operating budget.
   - Landowner contributions at the time of project completion.
   - Project Partner contribution (sources may include foundation support, private donations, fundraising, or other sources).
   - Dedicated state income source (such as assessment on timber sales, state property transfer fee.)
   - Potential future Forest Legacy administration funds to assist with monitoring costs.
4. Support the establishment of a dedicated source of funds to meet all or some of the stewardship obligations. The type of fund may include:
   - Establish a fund to cover administration, monitoring, and enforcement, and affirmative management activities of the easement holder;
   - Establish a separate fund for violation enforcement and legal defense.
5. Provide consistent and adequate staffing and resources to meet stewardship obligations and establish stewardship partnerships.
   - State agency and field staff.
   - Provide regular training to field personnel to ensure thorough and consistent monitoring practices.
   - Establish partnerships with NGOs, local and county units of government. Provide supervision and coordination of state staff, NGOs and other organizations, interns and/or volunteers.
   - Provide resources to conduct monitoring, including aerial monitoring of large parcels.
6. Develop and maintain quality landowner relationships.
   - Regular communications and annual meetings.
   - Review of conservation easement terms and landowner management goals.
   - Provide affirmative assistance through educational materials, Best Management Practices guidelines, and other resources as appropriate.

E. Land Trust Funding Mechanisms

i. Sources of Funds

Many land trusts have established endowments to cover stewardship administration, monitoring, and enforcement costs. The Land Trust Alliance's (LTA) Land Trust Accreditation Commission acknowledges the importance of adequate stewardship endowments, and the *Land Trust Standards and Practices* (established in 2004) includes provisions for land trusts to meet their stewardship obligations. Several of the resources listed in Section 9 of this report identify valuable resources from the land trust community that are available for assessing stewardship needs, calculating costs, and developing guidelines. In summary, land trusts employ three basic sources of funds for stewardship administration, monitoring, and enforcement costs: landowner contributions, fund raising, and dedicated sources of funds.

1. Landowner contributions. Land trusts have traditionally received stewardship funds for projects from the landowner.
   - Regular payment. Entire sum paid at time of closing. This is the most frequently cited approach to garnering stewardship funds for a property.
   - Deferred or Installment payments. This option is based on an agreement between the landowner and easement holder to pay the stewardship contribution in fixed

amount payments over a specified number of payments. It may be structured as a single deferred payment or a number of installment payments. To ensure installment payments are received, several instruments may be used, detailed in an installment agreement or annual payment agreement. Mechanisms to ensure that current and future owners honor the obligation include structuring the agreement as a covenant that runs with the land, having all payments due at property transfer, and securing the stewardship pledge with a mortgage. There are multiple variations on the deferred payment practices.

- Annual payments. Payments are made on an annual basis, based on an established flat-rate cost for stewardship administration and monitoring services. The agreement runs with the land, and payments are due annually for the term of the conservation easement.

2. Fund raising. When landowners do not provide a contribution or provide only a partial contribution for the stewardship endowment, land trusts may raise the funds through several other means. Fundraising efforts can be conducted specifically for the project or on a landscape scale, including other conservation projects.
   - Capital Campaign. Land trusts often seek to meet funding needs through direct appeals to private donors and/or philanthropic foundations. Campaigns may be targeted to individual properties or include multiple properties as part of a regional conservation effort. Campaigns often include all project costs – acquisition, due diligence, and stewardship endowment – or may be targeted specifically to support conservation easement stewardship endowment.
   - Foundation grants. Land trusts may seek support of conservation project costs from competitive national and regionally-based philanthropic foundations. Depending on the foundation's mission and priority program areas, stewardship endowment contributions may be included in project requests.
3. State Sources.
   - State endowment funds for a variety of intents and purposes are supported by dedicated funds from a variety of different sources.
   - Annual contributions from state operating budgets.
   - Dedicated source of funds (as described in Section F).

ii. Conservation Defense Fund

To alleviate the risks and costs of challenges to conservation easements, the Land Trust Alliance created a charitable risk insurance pool in 2011. Terrafirma Risk Retention Group, LLC, is owned and operated by 420 participating land trusts. This insurance protects over 20,000 land trust properties covering 6,354,434 acres in 46 states and Washington, D.C., from conservation violations or legal attack by other parties (see Section 9 – Resources).

F. State-Dedicated Fund Options

The Trust for Public Lands is regularly compiling a snapshot of state-dedicated funding sources for land conservation, both past and present, that includes funds for stewardship. The most recent data, updated in March 2013, identifies 14 types of funding sources that include oil and gas royalties and leases, lottery proceeds, real estate transfer tax, sales tax, voter-approved and legislatively approved bonds, deed recording fees, appropriations from a state's general fund, an agriculture tax, county impact fees on natural gas wells, and a sporting good tax. The two most common funding sources are the real estate transfer tax (12 states) and voter-approved bonds (12 states). Eight states receive or have received funds for conservation from the state general fund. Five states receive funds from lottery proceeds. Many states have used these conservation funding sources to offset budget deficits in the general fund, resulting in much less dedicated funding for conservation in the past several years.

8 Concluding Observations

States and territories responsible for FLP conservation easements have an obligation to monitor the lands and ensure that there are no violations. Conservation easement stewardship is a continuing process that strives to avoid and/or reduce violations, promote appropriate management, and protect the property's conservation values. While the entity holding the conservation easement bears the responsibility for a single property, the capabilities of all states and land trusts to effectively carry out their stewardship responsibilities contribute to maintaining the integrity of all conservation easement lands.

A survey of FLP state program managers in the United States highlighted the need for more funding dedicated to the stewardship of land conserved under the Forest Legacy Program.

While meeting their conservation easement stewardship obligations, states relying solely on annual operating budget funding face an ever increasing challenge of consistently providing funds for monitoring personnel. The states that have established dedicated stewardship funds unanimously report that it serves as an essential component in meeting the immediate and long-term financial obligation of conservation easement stewardship. A majority of these states rely on both the annual revenue from the dedicated stewardship fund and other funds such as the state annual operating budget.

Nine states reported three primary means of funding a dedicated stewardship fund:

1. The allocation of state funds to a state-dedicated fund;
2. Landowner and/or project partner contributions to a state- or NGO-dedicated fund; and
3. Revenue from a dedicated funding source, such as an assessment on timber harvests, to a state-dedicated fund.

There is no one dedicated stewardship fund model for states across the country to replicate. Depending on the political and financial climate of the state, the administration mechanism and the funding source(s) should be tailored. All states with funds reported that the process to establish and implement the fund and associated policies required several years. In a majority of states, positive working relationships with other state agencies and partner NGOs were important in the establishment and/or implementation of the dedicated stewardship fund.

In identifying the pros and cons of establishing a dedicated fund, nearly all states expressed that the establishment of a dedicated fund should have been done sooner to better meet the stewardship financial needs for all properties.

As a first step toward achieving financial security in meeting stewardship obligations, a number of states acknowledged the need for assessing the cost of conservation easement stewardship for FLP properties, and establishing written policies for administration, monitoring, and enforcement practices. Twelve surveyed states and territories identified that their conservation easement stewardship activities would benefit from the establishment of a dedicated stewardship fund. Six respondents answered "Don't Know" to this question, indicating the need for additional information about the dedicated stewardship fund option.

The states and territories stewarding Forest Legacy conservation easement properties are seeking ways to meet their obligations in times of restrictive state funding. This report highlights the characteristics of FLP stewardship programs across the country, and identifies the various administrative and financial means used to meet program demands. The resources contained in this report are offered to help state program managers strengthen the capacity of their stewardship program for present needs and in the years ahead.

9 Stewardship Resources and Literature

The following resources and literature references are provided to enable FLP program managers and FLP stakeholders to learn more about stewardship recommendations and practices, including the activities involved with stewardship and the range of costs associated with each activity. These reports also provide detailed information gathered from local and state agencies involved with land conservation as well as information from the land trust community. In addition to discussing how to determine stewardship costs, there is information on determining stewardship contribution amounts, raising and managing stewardship funds, and evaluating stewardship program practices.

A. Resources and Literature

Center for Natural Lands Management – Property Analysis Record (PAR)
CNLM's Property Analysis Record (PAR) system provides a process to develop a management plan with associated costs and a calculation of the long-term support required to manage conservation lands in perpetuity.
http://www.cnlm.org/cms/index.php?option=com_content&task=view&id=21&Itemid=155

Doscher, P. et el. Determining Stewardship Costs and Raising and Managing Dedicated Funds.
Land Trust Alliance, 2007.
Developed as a course as part of the Land Trust Alliance's Standards and Practices Curriculum, the publication covers the costs and funding of land and conservation easement stewardship, and presents best practices in managing a land trust's financial assets and dedicated funds. Includes template documents developed by land trusts.
http://www.eli.org/pdfs/landtrusthandbook/4.pdf
http://iweb.lta.org/Purchase/ProductDetail.aspx?Product_code=DL_CURR_DETSTEW

Doscher, Paul and Masland, Thomas N. Esq. Conservation Stewardship Transfer Fees.
Society for the Protection of New Hampshire Forests, 2011
Doscher_Masland_Conservation_Stewardship_Transfer_Fees_2001.pdf

Indiana University, School of Public and Environmental Affairs. Summary Report for the USDA Forest Service Forest Legacy Program: An Analysis of State Forestry Agency Organizational Structure and its Effectiveness for the Sustainable Monitoring of Conservation Easements
V600 Master's Capstone, Spring 2012.
USFS_Report_Forestry_Agency_Structure_Effectiveness_Monitor_CE_2012.pdf

Jay, Jessica. Land Trust Risk Management of Legal Defense and Enforcement of Conservation Easements: Potential Solutions. Vermont Law School; University of Denver Sturm College of Law, 2000.
http://conservationlaw.org/publications/03-LandTrustRiskManagement.pdf

Land Trust Alliance, Funding Land Stewardship. Practice 12A, Standards and Practices, 2004.
http://www.landtrustalliance.org/training/training/1day/stewardship
LTA_Financing_Stewardship_Standards_Practices_2004.pdf

Land Trust Alliance Conservation Defense Fund: Terrafirma Risk Retention Group, LLC
http://www.landtrustalliance.org/conservation/conservation-defense/conservation-defense-insurance

Loza, A., Pregmon, P., Introduction to Stewardship Funding Arrangements: Alternatives for Landowners to Help Holders Meet Conservation Easement Obligations: A Guide. Pennsylvania Land Trust Association, 2012.
http://conservationtools.org/libraries/1/library_items/1188-Introduction-to-Stewardship-Funding-Arrangements-Alternatives-for-Landowners-to-Help-Holders-Meet-Conservation-Easement-Obligations-A-Guide

Loza, A., Pregmon, P., Model Stewardship Funding Covenant and Commentary. Pennsylvania Land Trust Association, 2012.
http://conservationtools.org/libraries/1/library_items/753-Model-Stewardship-Funding-Covenant-and-Commentary

Minnesota Department of Natural Resources, Conservation Easement Stewardship and Enforcement Program Plan, 2011
http://files.dnr.state.mn.us/lands_minerals/conservation_easement_stewardship_final_report.pdf
MN_CE_Stewardship_Report_2011.pdf

Pennsylvania Land Trust Organization, Model documents
http://conserveland.org/

Pennsylvania Land Trust Association, Costs of Conservation Easement Stewardship: A Guide 2011
The guide details options and costs associated with conservation easement stewardship activities. Includes a digital spreadsheet to help estimate the stewardship costs associated with a project and identify the investment needed to finance the stewardship.
http://conservationtools.org/libraries/1/library_items/956-Costs-of-Conservation-Easement-Stewardship-A-Guide
PLTA_Costs_CE_Stewardship_Guide_2011.pdf

Story, Clark. A Field Guide to Conservation Finance, Island Press, 2007
A review of land conservation financing options including transfer fees, voluntary surcharges, seller financing, revolving funds, and project related investment programs.
http://conservationtools.org/libraries/1/library_items/665-A-Field-Guide-to-Conservation-Finance

Vermont Law School Land Use Institute and the Land Trust Alliance, 2013, Practical Pointers for Land Trusts When Facing a Lawsuit or Other Legal Challenge of Any Size
http://iweb.lta.org/Purchase/ProductDetail.aspx?Product_code=PRACPOINTERS

Zeller, Marty. Stewardship of Land: An Investigation into the State of the Art. 2000
Investigation into land stewardship techniques, identifying the key issues related to stewardship practices facing land conservation groups and land managers, and potential options to meet these challenges.
http://cnlm.org/cms/images/stories/cnlm_docs/management_issues/stewardship.pdf
Zeller_Stewardship_of_Land_2000.pdf

B. Example Documents: State Programs, Guidelines, Dedicated Funding Sources

i. Stewardship Program Policies and Guidelines

NEW HAMPSHIRE NH_FL_Policy_Stewardship_CE_2013.pdf
NH_FL_Guidelines_CE_Stewardship_Monitoring_2012.pdf
NH_OEP_Conservation_Land_Stewardship_Program_2013.pdf

MAINE ME_Determining_Monitoring_Costs_Stewardship_Endowment_Levels_2009.pdf

MINNESOTA MN_MFF_Monitoring_Stewardship_Overview_2011.pdf

PENNSYLVANIA PA_DCNR_CE_Monitoring_Protocol_2008

MICHIGAN MI_DNR_CE_Stewardship_Guidebook_2001
MI_DNR_Stewardship_CE_Policy_Procedures_2001

ii. Stewardship Fund Policy Description

HAWAII HI_Conveyance_Tax_Administrative_Rule.pdf

ILLINOIS IL_Forest_Development_Act_Law_2009.pdf
IL_Forestry_Development_Cost_Share_Program.pdf

NEW HAMPSHIRE NH_LCIP_Monitoring_Endowment_2000.pdf
NH_Statute_CT_Lakes_Monitoring_Endowment_2002.pdf

MAINE ME_Determining_Monitoring_Costs_Stewardship_Endowment_Levels_2009.pdf

MASSACHUSETTS MA_ Trust_ Fund_Law.pdf
MA_ Trust Fund.pdf

MINNESOTA MN_MS84.66_ Forests_Future_Program.pdf
MN_MS84.68_Forests_Future_CE_Account_Statute_2012.pdf

VERMONT VT_3VSA 2807_Land_Facilities_Trust_Fund.pdf

iii. Partnership Arrangements, Memorandums of Understanding

NEW HAMPSHIRE NH_FL_Guidelines_CE_Stewardship_Monitoring_2012.pdf
MOU DRED-OEP: Page 22

iv. Calculating Stewardship Costs

State Examples:

NEW HAMPSHIRE NH_FL_Guidelines_CE_Stewardship_Monitoring_2012.pdf
Endowment Contribution Policy: page 30

MAINE ME_Determining_Monitoring_Costs_Stewardship_Endowment_Levels_2009.pdf

VERMONT VT_ANR_CE Formula_2013.pdf

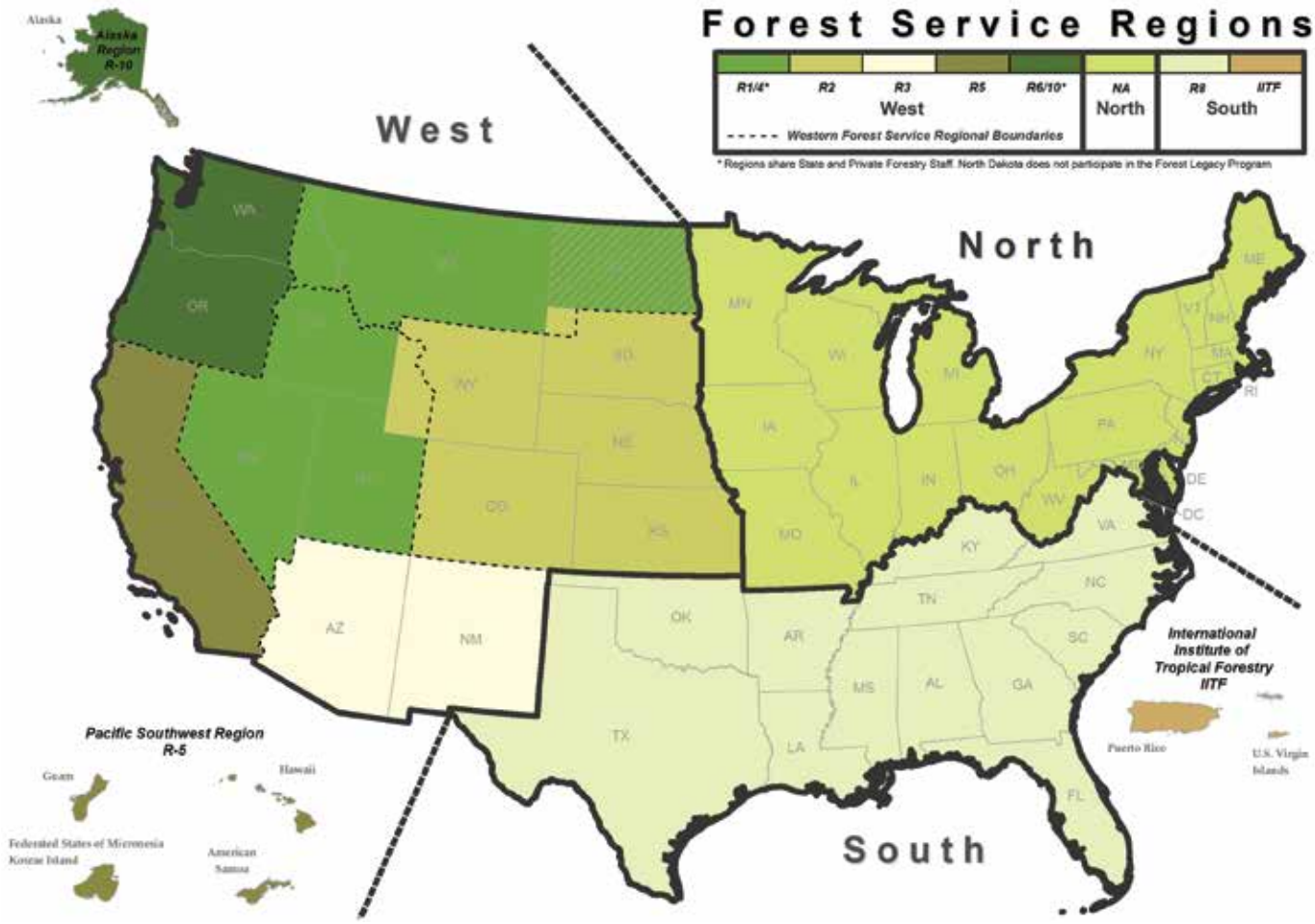
v. Dedicated Sources of Funding

The Conservation Almanac, A Resource of The Trust for Public Land.
The Conservation Almanac covers land conservation activity across the United States. Information is provided on a state basis, and is regularly updated by The Trust for Public Land.

- State dedicated funding sources for land conservation

State data on conservation land acres, State and Federal agencies active in land protection, and conservation policies and programs http://www.conservationalmanac.org/secure/almanac/index.shtml.

C. Map and List of U.S. Forest Service FLP States and Territories, by Region



U.S. Forest Service Northeastern Area, 2013

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, DC 20250-9410, or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). USDA is an equal opportunity provider and employer."